

Attorney Docket No. MJA-23702.03

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James R. Mault et al.

Serial No.: 09/976,967

Group Art Unit: 2166

Filing Date: October 12, 2001

For: SYSTEM AND METHOD OF INTEGRATED CALORIE MANAGEMENT

PETITION FOR FILING APPLICATION BY OTHER
THAN ALL THE INVENTORS - UNDER 37 CFR 1.47(a)Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

FAX RECEIVED
JUL 02 2002
PETITIONS OFFICE

The inventors of the above-identified application, James R. Mault, Nicholas Anderson and Rob Pledger respectfully petition to have the above-identified application accepted absent the signature of one joint inventor, John Sanderson, who has refused to join in the application:

1. The above-identified application claims the benefit of U.S. Provisional Application No. 60/240,185 that was filed October 13, 2000.
2. Prior to the filing of the provisional application, the four joint inventors of the above-identified application worked together to develop the instant invention.
3. Three inventors (Mault, Anderson and Pledger) subsequently assigned all right, title and interest in the invention to HealtheTech, Inc. See Exhibit A, Assignments.
4. Thereafter, inventors Mault, Anderson and Pledger caused the above-identified application to be filed and have undertaken efforts to obtain the consent and signature of John Sanderson.

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5. Specifically, the following steps have been taken in effort to secure the consent and signature of John Sanderson:

- a. On February 12, 2002 a copy of the application and Declaration with Power of Attorney was forwarded via certified mail, return receipt requested, to John Sanderson from Allen Krass. However, the February correspondence material was returned with a notice from the U.S. Post Office indicating that John Sanderson had changed his address. See Exhibit B, February 12, 2002 Letter.
- b. On March 1, 2002, a copy of the application with the Declaration and Power of Attorney was forwarded via certified mail, return receipt requested, to John Sanderson at his new address from Allen Krass. The March 1 letter stated that: "If we do not receive the executed Declarations with Power of Attorney and Assignments for these applications by March 8, 2002, we will assume that you are not going to join in on these applications as a joint inventor by signing these documents and will take the necessary action to preserve our client's rights." A return receipt for the March 1, 2002 correspondence was signed by John Sanderson and was received at the offices of Allen Krass on March 7, 2002. See Exhibit C, March 1, 2002 Letter and Returned Receipt.
- c. Finally, as noted in the attached declaration of Mark D. Schneider (a registered patent attorney), an effort was made to telephone John Sanderson. Mr. Schneider left two messages on John Sanderson's home answering machine requesting that Dr. Sanderson execute the

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Declaration and Power of Attorney in the above-identified application.

However, to date, Mr. Schneider has received no reply to either message. See Exhibit D.

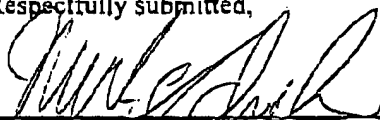
6. The last known address for John Sanderson is:

Dr. John Sanderson
9 Islandview
Irvine, California 92604-3601

7. Attached herewith is a copy of the Declaration and Power of Attorney bearing the signatures of James R. Mault, Nicholas Anderson and Rob Pledger. Exhibit E. The signature of John Sanderson is blank as a result of his refusal to sign. Therefore, the Declaration should be treated as having been signed by all inventors on behalf of the non-signing inventor. See MPEP 409.30(a).

8. In view of the refusal of John Sanderson to join in the present application, inventors James R. Mault, Nicholas Anderson and Rob Pledger are entitled to make such application on behalf of themselves and John Sanderson. Therefore, in view of the above information and facts, the inventors respectfully request that this petition be granted.

Respectfully submitted,



Mark D. Schneider
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CERTIFICATE OF MAILING BY "EXPRESS MAIL""EXPRESS MAIL" MAILING LABEL NUMBER E 106379588565DATE OF DEPOSIT March 12 2002

I hereby certify that this paper or fee (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Patents, Washington, D.C. 20231.

Jonathan L. Krass

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